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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
MARK ANTHONY CANDLER,  
Plaintiff,  
v.  
SANTA RITA COUNTY JAIL WATCH  
COMMANDER, et al.,  
Defendants.

Case No. 11-cv-01992-CW (PR)

ORDER SERVING COGNIZABLE CLAIM

Plaintiff, a state prisoner incarcerated at the California Men's Colony, filed this pro se civil rights action pursuant to 42 U.S.C. § 1983, complaining about his conditions of confinement during the period of his incarceration as a pretrial detainee at the Alameda County Jail in Santa Rita (SRCJ). On January 26, 2015, the Court granted Defendants' motion for summary judgment on all claims in the first amended complaint. However, because summary judgment on the procedural due process claim was granted on the ground that Plaintiff failed to name the proper defendants, the Court granted Plaintiff's motion for leave to file a second amended complaint (2AC) to allow him to name the proper defendants.

On March 4, 2015, the Court dismissed Plaintiff's 2AC with leave to amend. The Court noted that, although Plaintiff named individuals as Defendants, he did not allege how they violated his procedural due process rights.

On March 19, 2015, Plaintiff filed a third amended

1 complaint, (3AC), which the Court now reviews.

2 DISCUSSION

3 I. Standard of Review

4 A federal court must conduct a preliminary screening in any  
5 case in which a prisoner seeks redress from a governmental entity  
6 or officer or employee of a governmental entity. 28 U.S.C.  
7 § 1915A(a). In its review, the court must identify any  
8 cognizable claims and dismiss any claims that are frivolous,  
9 malicious, fail to state a claim upon which relief may be granted  
10 or seek monetary relief from a defendant who is immune from such  
11 relief. Id. § 1915A(b)(1), (2). Pro se pleadings must be  
12 liberally construed. Balistreri v. Pacifica Police Dep't, 901  
13 F.2d 696, 699 (9th Cir. 1988).

14 To state a claim under 42 U.S.C. § 1983, a plaintiff must  
15 allege two essential elements: (1) that a right secured by the  
16 Constitution or laws of the United States was violated, and  
17 (2) that the alleged violation was committed by a person acting  
18 under the color of state law. West v. Atkins, 487 U.S. 42, 48  
(1988).

19 Liability may be imposed on an individual defendant under 42  
20 U.S.C. § 1983 if the plaintiff can show that the defendant's  
21 actions both actually and proximately caused the deprivation of a  
22 federally protected right. Lemire v. California Dept.  
23 Corrections & Rehabilitation, 726 F.3d 1062, 1074 (9th Cir.  
24 2013); Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988). A  
25 person deprives another of a constitutional right within the  
26 meaning of § 1983 if he does an affirmative act, participates in  
27 another's affirmative act or omits to perform an act which he is  
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1 legally required to do, that causes the deprivation of which the  
2 plaintiff complains. Leer, 844 F.2d at 633.

3 II. Plaintiff's Allegations

4 In his 3AC, Plaintiff names as Defendants SRCJ Watch  
5 Commander Gordon Bowan and SRCJ Deputies Bervin Hankins,  
6 Christopher Feeny, Rogelio Matedne, Mark Schlegal, Terry Carson,  
7 Aaron Garth, Robert Bixby, Robert Griffith and Michael Molly.  
8 Plaintiff alleges that all Defendants, except Bowan, were on the  
9 SRCJ Classification Committee and were responsible for the  
10 decision to place him in administrative segregation without due  
11 process of law, in that he did not receive notice of the reason  
12 Defendants determined to place him in administrative segregation,  
13 he did not have a hearing on the matter and he did not have an  
14 opportunity to present his views. As a result, for the entire  
15 900 days Plaintiff was a pretrial detainee at SRCJ, he remained  
16 in isolation and was denied access to inmate programs and group  
17 religious services, he ate meals by himself in his cell, and had  
18 little access to the outdoor yard.

19 Liberally construed, the 3AC appears to state a cognizable  
20 procedural due process claim against Deputies Hankins, Feeny,  
21 Matedne, Schlegal, Carson, Garth, Bixby, Griffith and Molly.  
22 However, even liberally construed, the 3AC does not state a  
23 cognizable claim against Watch Commander Bowan because the  
24 allegations state he was not on the Classification Committee nor  
25 do they indicate how he was responsible for the decision to place  
26 Plaintiff in administrative segregation. Therefore, the claim  
27 against Watch Commander Bowan is dismissed. Dismissal is with  
28 prejudice because Plaintiff had two opportunities to state a

1 cognizable claim against Bowan and he has failed to do so.

2 CONCLUSION

3 For the foregoing reasons, the Court orders as follows:

4 1. The procedural due process claim against Watch Commander  
5 Bowan is dismissed with prejudice.

6 2. Plaintiff states a cognizable claim for the violation of  
7 his right to procedural due process against all Defendants, with  
8 the exception of Bowan.

9 3. The Clerk of the Court shall mail a Notice of Lawsuit and  
10 Request for Waiver of Service of Summons, two copies of the  
11 Waiver of Service of Summons, a copy of the 3AC (docket no. 80)  
12 and all attachments thereto, a copy of this Order, the Order  
13 Granting Defendants' Motion for Summary Judgment, (docket no.  
14 77), and a copy of the Order Dismissing Second Amended Complaint  
15 (docket no. 79) to SRCJ Deputies Bervin Hankins, Christopher  
16 Feeny, Rogelio Matedne, Mark Schlegal, Terry Carson, Aaron Garth,  
17 Robert Bixby, Robert Griffith and Michael Molly. The Clerk shall  
18 also mail a copy of the 3AC and a copy of this Order and the  
19 other Orders mentioned above to the Office of the Alameda County  
20 Counsel. Additionally, the Clerk shall mail a copy of this Order  
to Plaintiff.

21 4. Defendants are cautioned that Rule 4 of the Federal  
22 Rules of Civil Procedure requires them to cooperate in saving  
23 unnecessary costs of service of the summons and complaint.  
24 Pursuant to Rule 4, if Defendants, after being notified of this  
25 action and asked by the Court, on behalf of Plaintiff, to waive  
26 service of the summons, fail to do so, they will be required to  
27 bear the cost of such service unless good cause be shown for the  
28 failure to sign and return the waiver forms. If service is

1       waived, this action will proceed as if Defendants had been served  
2       on the date that the waiver is filed, except that pursuant to  
3       Rule 12(a)(1)(B), Defendants will not be required to serve and  
4       file an answer before sixty days from the date on which the  
5       request for waiver was sent. (This allows a longer time to  
6       respond than would be required if formal service of summons is  
7       necessary.)

8              Defendants are advised to read the statement set forth at  
9       the foot of the waiver form that more completely describes the  
10       duties of the parties with regard to waiver of service of the  
11       summons. If service is waived after the date provided in the  
12       Notice but before Defendants have been personally served, the  
13       answer shall be due sixty days from the date on which the request  
14       for waiver was sent or twenty days from the date the waiver form  
15       is filed, whichever is later.

16              5. The following briefing schedule shall govern dispositive  
17       motions in this action:

18                  a. No later than thirty days from the date the answer  
19       is due, Defendants shall file a motion for summary judgment or  
20       other dispositive motion. If Defendants file a motion for  
21       summary judgment, it shall be supported by adequate factual  
22       documentation and shall conform in all respects to Federal Rule  
23       of Civil Procedure 56. If Defendants are of the opinion that  
24       this case cannot be resolved by summary judgment, they shall so  
25       inform the Court prior to the date the summary judgment motion is  
26       due. All papers filed with the Court shall be promptly served on  
27       Plaintiff.

28                  At the time of filing the motion for summary judgment or  
other dispositive motion, Defendants shall comply with the Ninth

United States District Court  
Northern District of California

1 Circuit's decision in Woods v. Carey, 684 F.3d 934 (9th Cir.  
2 2012), and provide Plaintiff with notice of what is required of  
3 him to oppose a summary judgment motion. If the motion is based  
4 on non-exhaustion of administrative remedies, Defendants must  
5 comply with the notice and procedural requirements in Albino v.  
6 Baca, 747 F.3d 1162 (9th Cir. 2014).

7 b. Plaintiff's opposition to the motion for summary  
8 judgment or other dispositive motion shall be filed with the  
9 Court and served on Defendants no later than twenty-eight days  
10 after the date on which Defendants' motion is filed.

11 Before filing his opposition, Plaintiff is advised to read  
12 the notice that will be provided to him by Defendants when the  
13 motion is filed, and Rule 56 of the Federal Rules of Civil  
14 Procedure and Celotex Corp. v. Catrett, 477 U.S. 317 (1986)  
15 (party opposing summary judgment must come forward with evidence  
16 showing triable issues of material fact on every essential  
17 element of his claim). Plaintiff is cautioned that because he  
18 bears the burden of proving his allegations in this case, he must  
19 be prepared to produce evidence in support of those allegations  
20 when he files his opposition to Defendants' summary judgment  
21 motion. Such evidence may include sworn declarations from  
22 himself and other witnesses to the incident, and copies of  
23 documents authenticated by sworn declaration. Plaintiff will not  
24 be able to avoid summary judgment simply by repeating the  
allegations of his complaint.

25 c. Defendants shall file a reply brief no later than  
26 fourteen days after the date Plaintiff's opposition is filed.

1                   d. The motion shall be deemed submitted as of the date  
2 the reply brief is due. No hearing will be held on the motion  
3 unless the Court so orders at a later date.

4                 6. Discovery may be taken in this action in accordance with  
5 the Federal Rules of Civil Procedure. No further court order  
6 pursuant to Rule 30(a)(2) is required before the parties may  
7 conduct discovery.

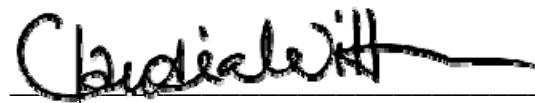
8                 7. All communications by Plaintiff with the Court must be  
9 served on Defendants, or Defendants' counsel once counsel has  
10 been designated, by mailing a true copy of the document to  
11 Defendants or Defendants' counsel.

12                8. It is Plaintiff's responsibility to prosecute this case.  
13 Plaintiff must keep the Court informed of any change of address  
14 by filing a separate paper with the Clerk headed "Notice of  
15 Change of Address," and must comply with the Court's orders in a  
16 timely fashion. Failure to do so may result in the dismissal of  
17 this action for failure to prosecute pursuant to Federal Rule of  
18 Civil Procedure 41(b).

19                9. Extensions of time are not favored, though reasonable  
20 extensions will be granted. Any motion for an extension of time  
21 must be filed no later than fourteen days prior to the deadline  
22 sought to be extended.

23               IT IS SO ORDERED.

24 Dated: 04/09/2015

  
25 CLAUDIA WILKEN  
26 United States District Judge